

No. 11016

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

CHESTER BOWLES, Administrator, Office of  
Price Administration,

Appellant,

vs.

EAST ST. JOHNS SHINGLE CO., INC., a Cor-  
poration,

Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United States  
for the District of Oregon

FILED

JUL 26 1945

PAUL P. O'BRIEN,  
CLERK



No. 11016

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

CHESTER BOWLES, Administrator, Office of  
Price Administration,

Appellant,

vs.

EAST ST. JOHNS SHINGLE CO., INC., a Cor-  
poration,

Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United States  
for the District of Oregon



# INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by *printing in italic* the two words between which the omission seems to occur.]

	PAGE
Answer, Amended .....	9
Appeal:	
Certificate of Clerk to Transcript of Record on .....	22
Designation of Record on (CCA).....	34
Designation of Record on (DC).....	21
Notice of .....	20
Order to Forward Exhibits on.....	21
Statement of Points on .....	33
Certificate of Clerk to Transcript of Record on Appeal .....	22
Complaint .....	2
Exhibits A, B, C—Statements of Overcharges .....	6
Designation of Record on Appeal (CCA).....	34
Designation of Record on Appeal (DC).....	21
Findings of Fact, Conclusions of Law and Judgment .....	18
Memo of Decision .....	17
Names and Addresses of Attorneys of Record	1

Notice of Appeal .....	20
Order Denying Motion for Supplemental Find- ings of Fact .....	19
Order to Forward Exhibits .....	21
Statement of Points on Appeal.....	33
Trial Proceedings .....	24
Exhibit for Plaintiff:	
5—Revised General Order .....	29
Witness for Plaintiff:	
Johnson, W. F.	
—direct .....	25

NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD:

JEROME S. BISCHOFF, NORMAN T. J. McCaffery, F. E. WAGNER,

Bedell Building, Portland, Oregon.

W. DUNLAP CANNON JR.,

1355 Market St., San Francisco,

For Appellant.

JAMES ARTHUR POWERS,

American Bank Building, Portland,

For Appellee.

United States District Court for the District  
of Oregon.

Civil No. 2502

CHESTER BOWLES, Administrator  
Office of Price Administration

Plaintiff

v.

EAST ST. JOHNS SHINGLE CO., INC. a  
corporation

Defendant

## COMPLAINT

### FIRST CAUSE OF ACTION

Comes now the plaintiff above named and  
alleges:

#### I.

That plaintiff, as Administrator of the Office of Price Administration brings this action for treble damages on behalf of the United States, pursuant to the provisions of Section 205(e) of the Emergency Price Control Act of 1942 (Pub. L. No. 421, 77th Cong., 2d Sess., 56 Stat. 23) enacted January 30, 1942, hereinafter called "the Act."

#### II.

That defendant is a corporation existing under and by virtue of the laws of the State of Oregon.

#### III.

That jurisdiction of the action is conferred upon



this court by Section 205(c) of the Act and by said Section 205(e) of the Act.

#### IV.

That at all times hereinafter mentioned, there has been in effect pursuant to the Act, Maximum Price Regulation 164—Red Cedar Shingles, as amended (7 Fed. Reg. 971) establishing a maximum price for direct mill sales of red cedar shingles.

#### V.

That from and including the 30th day of June 1943, more than six months after the date of approval and enactment of the Act, to and including the [1\*] date of the filing of this complaint, the defendant, a manufacturer of red cedar shingles at Portland, Oregon, sold and delivered carloads of red cedar undercourse shingles to numerous wholesalers, distribution yards and other purchasers. That all of said purchases were made in the course of trade. That defendant demanded and received a price or consideration for each such carload of red cedar shingles in excess of the maximum price established by Maximum Price Regulation 164, as set forth in Exhibit A attached hereto and made a part of this complaint.

#### VI.

That three times the aggregate amount by which the prices charged and received by the defendant referred to in Paragraph V above exceeded the

---

\*Page numbering appearing at foot of page of original certified Transcript of Record.

maximum prices provided by Maximum Price Regulation 164 equals \$1,414.74.

## SECOND CAUSE OF ACTION

### I.

Plaintiff realleges Paragraphs I, II, III and IV of the First Cause of Action.

### II.

That from and including the 30th day of June 1943, more than six months after the date of approval and enactment of the Act, to and including the date of the filing of this complaint, the defendant, a manufacturer of red cedar shingles at Portland, Oregon, sold and delivered carloads of red cedar shingles to numerous wholesalers, distribution yards, and other purchasers. That all of said purchases were made in the course of trade. That defendant demanded and received a price or consideration for each said carload of red cedar shingles in excess of the maximum price established by Maximum Price Regulation 164, as set forth in Exhibit B attached hereto and made a part of this complaint, in that the defendant charged and caused the buyers to pay, in addition to the ceiling price, transportation expenses not permitted by Maximum Price Regulation 164.

### III.

That three times the aggregate amount by which the prices charged and received by the defendant referred to in Paragraph II above exceeded the [2]

maximum prices provided by Maximum Price Regulation 164, equals \$3,980.25.

### THIRD CAUSE OF ACTION

#### I.

Plaintiff realleges Paragraphs I, II, III and IV of the First Cause of Action.

#### II.

That from and including the 30th day of June 1943, more than six months after the date of approval and enactment of the Act, to and including the date of the filing of this complaint, the defendant, a manufacturer of red cedar shingles at Portland, Oregon, sold and delivered carloads of red cedar shingles to numerous wholesalers, distribution yards, and other purchasers. That all of said purchases were made in the course of trade. That defendant demanded and received a price or consideration for each said carload of red cedar shingles in excess of the maximum price established by Maximum Price Regulation 164, as set forth in Exhibit C attached hereto and made a part of this complaint, in that the defendant failed to grant the cash discount customarily allowed by the defendant in October 1941, as required by Maximum Price Regulation 164.

#### III.

That three times the aggregate amount by which the price charged and received by the defendant referred to in Paragraph II above exceeded the maximum prices provided by Maximum Price Regulation 164, equals \$1,397.43.

Wherefore plaintiff demandes judgment on behalf of the United States against the defendant in the sum of \$6,792.42.

Dated this 26th day of June, 1944.

/s/ JEROME S. BISCHOFF

of Attorneys for the Plaintiff

/s/ NORMAN T. J. McCAFFERY

of Attorneys for the Plaintiff

State of Oregon

County of Multnomah—ss.

I, Jerome S. Bischoff one of the attorneys for Plaintiff do hereby certify that I have prepared the foregoing copy of Complaint and have carefully compared the same with the original thereof; and that it is a correct transcript therefrom and of the whole thereof.

Portland, Oregon, dated the... day of June, 1944.

Attorney for Plaintiff

[Endorsed]: Filed June 26, 1944. [3]

# EXHIBIT A

Date	Customer	Car Number	Amount of Overcharge (Straight Overcharge)
8/14/43	Richardson Lumber Co.	NP 33565	\$ 3.75
10/ 4/43	Coates-Hoppe Lumber Co.	PENN 100682	72.06
10/ 7/43	W. F. Hoppe	WLE 25240	69.50
10/25/43	Millikan Bros.	PM 82604	62.50
11/10/43	Millikan Bros.	ATSN 134532	65.00
11/11/43	Farmers Union Stock Coop.	CB&Q 120793	85.60
11/13/43	West Lumber & Coal Co.	Milw 20845	40.05
12/10/43	P. J. Bryne & Son	SL&SF 14581	73.12

Total.....\$471.58

EXHIBIT B

Date	Customer	Car Number	Amount of Overcharge (Truck. Costs)
6/30/43	Kay Bee Shingle Co. Inc.	ACY 1177	25.00
7/ 1/43	Griswold Lumber Co.	GTW 42219	25.00
7/ 3/43	Kay Bee Shingle Co., Inc.	WAB 86352	25.00
7/ 3/43	Mead Lumber & Coal Co.	IC 12870	25.00
7/ 6/43	Kay Bee Shingle Co., Inc.	MC 86516	31.20
1/ 7/43	West Lumber & Coal Co.	MP 93432	25.00
7/12/43	Shelton Lumber Co.	ACL 56577	25.00
7/12/44	Kay Bee Shingle Co., Inc.	DIT 17598	25.00
7/13/43	Carhart Lumber Company	NYC 152574	25.00
7/16/43	Drake Lumber Co.	NYC 155266	25.00
7/17/43	A. W. Stickle & Co.	NYC 205676	25.00
7/19/43	Carhart Lumber Co.	Milw 713079	25.00
7/24/43	A. W. Stickle & Co.	NKP 22051	25.00
7/24/43	Ward Lewis Lumber Co.		25.00
7/26/43	Carhart Lumber Co.	DRGW 67099	26.70
7/27/43	A. W. Stickle & Co.	MP 41063	25.00
7/30/43	Carhart Lumber Co.	CYW 71650	26.50
7/31/43	Carhart Lumber Co.	B&O 173700	27.00
8/ 2/43	Kay Bee Shingle Co., Inc.	PM 84208	25.00
8/ 3/43	Harberg Lumber Company	NP 7118	25.00
8/ 4/43	Kay Bee Shingle Co., Inc.	CBQ 44933	25.00
8/ 5/43	W. C. Smith	NP 26040	25.00
8/12/43	Williams Lumber Co.	Milw 595133	25.00
8/14/43	Richardson Lumber Co.	NP 33565	25.00
8/16/43	Calloway Lumber & Coal Co.	Erie 86245	23.70
8/19/43	Kay Bee Shingle Co., Inc.	GMO 24093	23.70
8/24/43	Kay Bee Shingle Co., Inc.	CNW 73574	25.00
8/25/43	Kay Bee Shingle Co., Inc.	NP 32154	25.00
8/26/43	Kay Bee Shingle Co., Inc.	LV 75978	26.70
8/28/43	Kay Bee Shingle Co., Inc.	SP 62092	25.00
9/ 2/43	Griswold Lumber Co.	WAB 83704	23.60
9/22/43	Evans Products Co.	GN 45962	28.50
9/23/43	Smith Hoffman & Wright Co.	TNO 39882	25.00
10/ 4/43	Coates Hoppe Lumber Co.	PENN 100682	28.85
10/ 7/43	W. F. Hoppe	WLE 25240	27.80
10/ 9/43	Smith Hoffman & Wright Co.	WAB 78942	29.30
10/18/43	Griswold Lumber Co.	SOO 32794	24.00
10/25/43	Millikan Bros.	PM 82604	25.00
10/26/43	Smith Hoffman & Wright Co.	NP 32847	25.00



Date	Customer	Car Number	Amount of Overcharge (Truck. Costs)
10/27/43	Marshall Shingle Co.	PENN 43317	26.70
11/ 2/43	Kay Bee Shingle Co., Inc.	TNO 58238	12.50
11/ 3/43	Kay Bee Shingle Co., Inc.	NP 18780	28.60
11/ 3/43	Redwood Manufacturers Co.	WAB 48566	24.65
11/ 3/43	Smith Hoffman & Wright Co.	NP 33025	25.00
11/10/43	Millikan Bros.	ATSN 134532	26.00
11/11/43	Farmers Union Stock Coop.	CB&Q 120793	28.30
11/13/43	West Lumber & Coal Co.	Milw 20845	26.70
12/ 1/43	Marshall Shingle Co.	Milw 592046	25.00
12/ 8/43	Kay Bee Shingle Co., Inc.	SP 26753	25.00
12/10/43	P. J. Bryne & Son	SL&SF 14581	29.25
12/21/43	Reilly Atkinson & Co., Inc.	PENN 571474	26.50
12/23/43	Marshall Shingle Co.	NP 33726	25.00
Total.....			\$1,326.75

## EXHIBIT C

Date	Customer	Car Number	Amount of Overcharge (Cash Discts.)
7/ 7/43	West Lumber & Coal Co.	MP 93432	\$13.74
7/12/43	Shelton Lumber Co.	ACL 56577	13.75
7/22/43	Indiana Farm Bu. Coop, Assn.	SL&SF 163741	18.12
8/ 3/43	Harberg Lumber Co.	NP 7118	18.70
8/ 5/43	W. C. Smith	NP 26040	19.73
8/12/43	Williams Lumber Co.	Milw 595133	17.75
8/14/43	Richardson Lumber Co.	NP 33565	16.87
9/ 2/43	Griswold Lumber Co.	WAB 83704	16.87
9/13/43	Van Pelton Lumber Co. (Inv. No. 14056-14060)		7.40
9/23/43	Smith Hoffman & Wright Co.	TNO 39882	16.25
10/ 4/43	Coates-Hoppe Lumber Co.	PENN 100682	13.55
10/ 7/43	W. F. Hoppe	WLE 25240	13.07
10/ 9/43	Smith Hoffman & Wright Co.	WAB 78942	19.04
10/18/43	Griswold Lumber Co.	SOO 32794	17.47
10/25/43	Millikan Bros.	PM 82604	11.75
10/26/43	Smith Hoffman & Wright Co.	NP 32847	16.25
10/27/43	Marshall Shingle Co.	PENN 43317	21.53
11/ 2/43	Kay Bee Shingle Co., Inc.	TNO 58238	13.93
11/ 3/43	Kay Bee Shingle Co., Inc.	NP 18780	11.44
11/ 3/43	Smith Hoffman & Wright Co.	NP 33025	17.50

Date	Customer	Car Number	Amount of Overcharge (Cash Discts.)
11/ 3/43	Redwood Manufacturers Co.	WAB 48566	17.49
11/10/43	Millikan Bros.	ATSN 134532	12.22
11/11/43	Farmers Union Stock Coop.	CB&Q 120793	15.33
11/12/43	Smith Hoffman & Wright Co.	NP 32197	16.99
11/13/43	West Lumber & Coal Co.	Milw. 20845	12.00
12/ 1/43	Marshall Shingle Co.	Milw. 592046	21.75
12/ 8/43	Kay Bee Shingle Co., Inc.	SP 26753	18.77
12/21/43	Reilly Atkinson & Co.	PENN 571474	18.30
12/23/43	Marshall Shingle Co.	NP 33726	18.35
Total.....			\$465.81

[Title of District Court and Cause.]

### AMENDED ANSWER

Comes now the Defendant and upon permission being granted by the Court during the Pretrial herein files this amended answer.

For Answer to Plaintiff's First Cause of Action, Defendant Admits, Denies and Alleges:

### FIRST DEFENSE

That the First Cause of Action in said Complaint fails to state a claim against Defendant upon which relief can be granted.

### SECOND DEFENSE

That this alleged cause of action cannot be maintained and should be dismissed because it has been stated in open court that the complaint was filed at the instigation of Mr. Jerome Bischoff and Mr.

Norman T. J. McCaffery, Regional Enforcement Attorney of the OPA and the District Enforcement Attorney for the OPA, respectively, and there being no delegation of authority shown in the complaint, or otherwise, these two individuals have no authority to maintain the within action; and furthermore, that under the OPA Law, the authority indiscriminately to have subpoenas issued and actions commenced cannot be delegated for the reason that the plaintiff is the one that is authorized by law to maintain actions, and plaintiff is not authorized by law to delegate his discretionary power to the individuals mentioned above; and further, that it appears that the within action was brought without any specific authorization from the plaintiff and without the exercise of any discretion on the part of the plaintiff, but instead upon the sole discretion of the enforcement attorneys referred [8] to above; and for the further reason that the enforcement attorneys referred to above, in exercising unauthorized discretionary authority in bringing the within action, with respect to the First Cause of Action in the within complaint places a different interpretation upon the regulation in question than is placed upon it by the official interpretation from Washington, D. C.

### THIRD DEFENSE

Denies that the Plaintiff has the right to maintain the First Cause of Action in said Complaint under the provisions of the law and regulations referred to therein.



## FOURTH DEFENSE

That the Defendant in carrying on the transactions referred to in said First Cause of Action did so in good faith, and without any intent to violate any of the rules or regulations of the Office of Price Administration, and in carrying out said transactions, followed the practice which was in existence and established at Defendant's place of business prior to the time the various rules and regulations of the Office of Price Administration were put into effect, and there was no intention, willful or otherwise, on the part of this Defendant, to violate any ceiling prices as alleged, and denies any violation thereof.

## FIFTH DEFENSE

That the Defendant is not liable for damages as claimed in the within action, as anything done or omitted to be done respecting same was done in good faith by the defendant and pursuant to the provisions of the Emergency Price Control Act of 1942, and the defendant in doing what it did and in omitting to do any of the things complained of did so in good faith and exercised all practicable diligence under the circumstances to comply with the provisions of said law.

For Answer to Plaintiff's Second Cause of Action, Defendant Admits, Denies and Alleges as follows:

## FIRST DEFENSE [9]

That the Second Cause of Action in said Complaint fails to state a claim against Defendant upon which relief can be granted.

## SECOND DEFENSE

That this alleged cause of action cannot be maintained and should be dismissed because it has been stated in open court that the complaint was filed at the instigation of Mr. Jerome Bischoff and Mr. Norman T. J. McCaffery, Regional Enforcement Attorney of the OPA and District Enforcement Attorney for the OPA, respectively, and there being no delegation of authority shown in the complaint, or otherwise, these two individuals have no authority to maintain the within action; and furthermore, that under the OPA Law, the authority indiscriminately to have subpoenas issued and actions commenced cannot be delegated for the reason that the plaintiff is the one that is authorized by law to maintain actions, and plaintiff is not authorized by law to delegate his discretionary power to the individuals mentioned above; and further, that it appears that the within action was brought without any specific authorization from the plaintiff and without the exercise of any discretion on the part of the plaintiff, but instead upon the sole discretion of the enforcement attorneys referred to above; and for the further reason that the enforcement attorneys referred to above, in exercising unauthorized discretionary authority in

bringing the within action, with respect to the Second Cause of Action in the within complaint, places a different interpretation upon the regulation in question than is placed upon it by the official interpretation from Washington, D. C.

### THIRD DEFENSE

Denies that the Plaintiff has the right to maintain the Second Cause of Action in said Complaint under the provisions of the law and regulations referred to therein.

### FOURTH DEFENSE

That the Defendant in carrying on the transactions referred to in said Second Cause of Action did so in good faith, and without any intent to violate any of the rules or regulations of the Office [10] of Price Administration, and in carrying out said transactions, acted upon representations that the manner in which they were being handled was approved by the Office of Price Administration, and this Defendant, immediately upon receiving conflicting and contrary advice from the Office of Price Administration, ceased and discontinued the practice complained of, and this Defendant, at no time, intentionally or otherwise, violated the ceiling price in the sale of the red cedar shingles referred to.

### FIFTH DEFENSE

That the Defendant is not liable for damages as claimed in the within action, as anything done or

omitted to be done respecting same was done in good faith by the Defendant and pursuant to the provisions of the Emergency Price Control Act of 1942, and the defendant in doing what it did and in omitting to do any of the things complained of did so in good faith and exercised all practicable diligence under the circumstances to comply with the provisions of said law.

For Answer to Plaintiff's Third Cause of Action, Defendant Admits, Denies and Alleges as Follows:

### FIRST DEFENSE

That the Third Cause of Action in said Complaint fails to state a claim against Defendant upon which relief can be granted.

### SECOND DEFENSE

That this alleged cause of action cannot be maintained and should be dismissed because it has been stated in open court that the complaint was filed at the instigation of Mr. Jerome Bischoff and Mr. Norman T. J. McCaffery, Regional Enforcement Attorney of the OPA and District Enforcement Attorney for the OPA, respectively, and there being no delegation of authority shown in the complaint, or otherwise, these two individuals have no authority to maintain the within action; and furthermore, that under the OPA law, the authority indiscriminately to have subpoenas issued and actions commenced cannot be [11] delegated for the reason that the plaintiff is the one that is author-

ized by law to maintain actions, and plaintiff is not authorized by law to delegate his discretionary power to the individuals mentioned above; and further, that it appears that the within action was brought without any specific authorization from the plaintiff and without the exercise of any discretion on the part of the plaintiff, but instead upon the sole discretion of the enforcement attorneys referred to above; and for the further reason that the enforcement attorneys referred to above, in exercising unauthorized discretionary authority in bringing the within action, with respect to the Third Cause of Action in the within complaint, places a different interpretation upon the regulation in question than is placed upon it by the official interpretation from Washington, D. C.

### THIRD DEFENSE

Denies that the plaintiff has the right to maintain the Third Cause of Action in said Complaint under the provisions of the law and regulations referred to therein.

### FOURTH DEFENSE

That the Defendant in carrying on the transactions referred to in said Third Cause of Action did so in good faith, and without any intent to violate any of the rules or regulations of the Office of Price Administration, and in carrying out said transactions, followed the practice which was in existence and established at Defendant's place of business prior to the time the various rules and



regulations of the Office of Price Administration were put into effect and there was no intention, willful or otherwise, on the part of this Defendant, to violate any ceiling prices as alleged, and denies any violation thereof.

### FIFTH DEFENSE

That the Defendant is not liable for damages as claimed in the within action, as anything done or omitted to be done respecting same was done in good faith by the defendant and pursuant to the provisions of the Emergency Price Control Act of 1942, and the defendant in doing what it did and in omitting to do any of the things complained of did so in good faith an exercise all practicable [12] diligence under the circumstances to comply with the provisions of said law.

Wherefore, Defendant prays that Plaintiff's Complaint be dismissed, and that it have judgment against Plaintiff for its costs and disbursements herein.

/s/ JAMES ARTHUR POWERS  
Attorney for Defendant

Service of the foregoing was made by leaving a certified copy thereof, at the office of the plaintiff's attorneys in Room 1011, Bedell Bldg., Portland, Oregon, on this 6th day of December, 1944.

/s/ JAMES ARTHUR POWERS  
Of Attorney for Defendant

[Endorsed]: Filed Dec. 7, 1944.

In the District Court of the United States  
for the District of Oregon

Civil No. 2502

CHESTER BOWLES, Administrator,  
Office of Price Administration,

Plaintiff

vs.

EAST ST. JOHNS SHINGLE CO., INC.,  
a corporation,

Defendant

MEMO OF DECISION

1. Undercoursing. Recovery for plaintiff—single damages.

2. Pre-Rail Trucking. I do not think that plaintiff has sustained the burden of proof. I do not feel convinced by a preponderance of the evidence that the interpretation of the regulations espoused by Mr. McCaffery and Mr. Bischoff is the correct interpretation as opposed to the interpretation advanced by the Seattle OPA office which defendant relied on.

3. Discount. I think plaintiff has failed to sustain the burden of proof. I do not feel convinced by a preponderance of the evidence that defendant granted discounts in the month of October, 1941, which, within the meaning of the regulations, it was bound later to grant.

4. The defendant acted in good faith. (In drawing this finding defendant's counsel will please follow the language of the statute as amended.)

5. Improper delegation of authority. I do not feel that plaintiff could lawfully make blanket delegation of the discretionary authority given him by the statute to sue in the cases deemed appropriate.

Dated this 15th day of December, A. D. 1944.

CLAUDE McCOLLOCH

Judge.

[Endorsed]: Filed Dec. 15, 1944. [14]

---

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND JUDGMENT

It appearing to the Court that the memorandum of Decision previously filed herein contained adequate findings of fact, none further will be made except:

FINDINGS OF FACT

Defendant has proved to the satisfaction of the Court that it acted in good faith in all respects charged in the complaint and if Defendant's acts constituted any violation of the statute or of any regulation, order, or schedule issue thereunder it was neither wilfull nor the result of failure to take practicable precaution against the occurrence of the violation.

From the foregoing and the preceding Memorandum of Decision, the Court:



CONCLUDES

That Plaintiff is not entitled to prevail herein on any of its causes of action (claims) and the Defendant is entitled to a judgment dismissing the complaint and cause.

It Is Therefore Considered, Ordered and Adjudged that the complaint and the causes of action (claims) therein stated be and the same are hereby dismissed with prejudice. Costs to neither party.

Done and dated in open Court this 19th day of December, 1944.

/s/ CLAUDE McCOLLOCH

Judge

The parties may offer additional or amended findings under the Rule, if desired.

/s/ CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed in Open Court Dec. 19, 1944. [15]

---

[Title of Cause.]

March 19, 1945.

ORDER

Plaintiff appearing by Mr. J. S. Bischoff, of counsel, defendant by Mr. James Arthur Powers, of counsel. Whereupon, this cause comes on to be heard by the Court upon the motion of the plaintiff for supplemental findings of fact herein, and the Court having heard the arguments of counsel,

It Is Ordered that said motion be, and the same is hereby, denied. [16]

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To East St. Johns Shingle Co., Inc., a corporation,  
defendants above named, and to James Arthur  
Powers, its attorney.

Notice is hereby given that Chester Bowles, Administrator, Office of Price Administration, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from that certain judgment dismissing said action made and entered in the above entitled action on the 19th day of December, 1944.

Dated at Portland, Oregon this 24 day of February, 1945.

/s/ F. E. WAGNER

/s/ W. DUNLAP CANNON, JR.

Attorneys for Appellant  
Chester Bowles,  
Administrator

[Endorsed]: Filed Feb. 24, 1945. [17]

[Title of District Court and Cause.]

## ORDER TO FORWARD EXHIBITS

It appearing necessary that the original exhibit in the above described cause accompany the transcript of record upon appeal to the Circuit Court of Appeals for the Ninth Circuit,

It Is Ordered that the Clerk of this Court forward to the Clerk of the Circuit Court of Appeals for the Ninth Circuit all original exhibits introduced in evidence in this cause.

Dated at Portland, Oregon, this 23rd day of March, 1945.

CLAUDE McCOLLOCH  
Judge

[Endorsed]: Filed March 23, 1945. [18]

---

[Title of District Court and Cause.]

## DESIGNATION OF RECORD

Comes now the plaintiff above named and as appellant in the above entitled action submits the following as his Designation of Record on the appeal of said matter to the United States Circuit Court of Appeals for the Ninth Circuit.

1. Complaint.
2. Amended Answer.
3. Memorandum of December 15, 1944.
4. Findings of Fact and Conclusions of Law and Judgment of Dismissal.
5. Order denying Motion for Supplementary Findings of Fact and Conclusions of Law.

6. Transcript of Pre-trials held November 6 and December 1, 1944.

7. Transcript of Trial, December 5, 1944.

8. Notice of Appeal.

9. This Designation of Record.

10. Order to Forward Exhibits.

11. Transcript proceedings March 19, 1945, in re Motion Supplementary Findings of Fact and Conclusions of Law.

Dated at Portland, Oregon, this 21st day of March, 1945.

F. E. WAGNER

Of Attorneys for Appellant  
[19]

State of Oregon,  
County of Multnomah—ss.

Due service of the foregoing Designation of Record is hereby accepted in Portland, Multnomah County, Oregon, this 21st day of March, 1945, by receiving a duly certified copy thereof.

JAMES ARTHUR POWERS

Attorney for Defendant

[Endorsed]: Filed March 23, 1945 [20]

---

In the District Court of the United States  
For the District of Oregon

United States of America,  
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon,

do hereby certify that the foregoing pages numbered 1 to 21 inclusive, constitute the transcript of record on appeal from a judgment of said court therein number Civil 2502, in which Chester Bowles, Administrator Office of Price Administration, is Plaintiff and Appellant, and East St. Johns Shingle Co., Inc., is Defendant, and Appellee; that the said transcript has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant and in accordance with the rules of court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

I further certify that I am enclosing under separate cover the exhibits in this case. The four transcripts of proceedings taken in this case are herewith enclosed.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 24th day of March, 1945.

[Seal]

LOWELL MUNDORFF,

Clerk.

By F. L. BUCK

Chief Deputy. [21]

In the District Court of the United States  
For the District of Oregon

Civil No. 2502.

CHESTER BOWLES, Administrator,  
Office of Price Administration,

Plaintiff,

vs.

EAST ST. JOHNSON SHINGLE CO., INC.,  
a corporation,

Defendant.

Portland, Oregon, Tuesday, December 5, 1944.

2:00 o'clock P. M.

Before:

Honorable Claude McColloch, Judge.

Appearances:

Mr. Norman T. J. McCaffery, Enforcement Attorney, Office of Price Administration, Portland District, and Mr. Jerome S. Bischoff, Chief of the Lumber Enforcement Unit, San Francisco Regional Office, Office of Price Administration, appearing for the Plaintiff.

Mr. James Arthur Powers, Attorney for the Defendant.

### TRIAL PROCEEDINGS [1]

Mr. McCaffery: I would like to call Mr. Johnson, please.



PLAINTIFF'S EVIDENCE

W. F. JOHNSON

was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn, testified as follows: [3]

DIRECT EXAMINATION

Q. Mr. Johnson, were you ever employed by the Office of Price Administration in the local District Office in Portland? A. I was. [6]

Q. In what capacity, Mr. Johnson?

A. Investigator. [7]

Mr. McCaffery: Q. Well, let me ask you, Mr. Johnson, if the plaintiff's Exhibit A does not reflect the correct amount of the overcharge based on \$2.10 per square basis on the respective transactions referred to therein. A. It does. [21]

Mr. Powers: We will object to that unless he gives some date, now, your Honor, for this reason: There was no price on this so-called undercoursing, even on their own contention here as made by Mr. McCaffery, here until sometime in September of 1943, and these items they are claiming for, they start back in July of '43, before that price went into effect, the first one, and end on December 10th, and they don't claim we violated any—that they made any sales at any other time than those particular dates. So what might have been there at sometime other is not pertinent here. I dislike to object but I do think that he ought to limit the inquiry here to the times we are concerned with.

Mr. McCaffery: If it please the Court, if prior to the enact- [24] ment of M.P.R. 164 the sales of singles by the defendant were governed by Maximum Price Regulation 215—G.M.P.R.; I am sorry—and if Mr. Powers will examine the complaint he will find there was nothing in August—I mean in July—at all. The first sale referred to is the 14th of August, 1943.

Mr. Powers: Yes, that is right. I missed that.

Mr. McCaffery: And it jumps from August to October, which is clearly after the time which he refers to.

Mr. Powers: The amendment was September 9th—I believe it was. The August one is not afterwards, is it?

Mr. McCaffery: It is not after September, of course, but at the time of the August sale you were under G.M.P.R.

Mr. Powers: What is that?

Mr. McCaffery: That is General Maximum Price Regulation [25]

Mr. McCaffery: Q. Mr. Johnson, would you be kind enough to state the reason that you used the \$2.10 price per square on undercoursing in figuring your overcharges?

A. There was something—there was a place in the regulations, in the M.P.R., that said that where the people did not have an established price they should go back to March, 1942, and that should be the basis upon which they should sell their merchandise, and we went through the books pretty



carefully, and for March of 1942, invoices, and we found one sale that had been made at \$2.10 a square and that was the basis that I used prior to—I think that was prior to the time that this price came through from [29] Washington for \$2.00, if I am not mistaken.

Q. In other words, Mr. Johnson, you were proceeding under the General Maximum Price Regulation? A. Yes. [30]

Mr. Powers: Now there is only one other thing that does not seem to be in the record, your Honor. It has to do with the question of who is prosecuting this action, and whether there was any authority delegated. At the pre-trial Mr. McCaffery stated that he could not answer the question whether they had any direct authority from the Price Administrator. He stated that it was upon his initiative and the initiative of Mr. Bischoff that this [133] action was filed. And I asked him, well, did he have it up with the Washington office, the office of the OPA in Washington, whether they transmitted what they had here and whether they were directed to bring it, and as I recall it Mr. McCaffery said that he couldn't answer that. So I will call Mr. McCaffery now and we will find out what the situation is, please.

The Court: Did you file this complaint, or Mr. Bischoff?

Mr. McCaffery: Yes, your Honor.

The Court: Do you have the information he wants?

Mr. McCaffery: Yes, your Honor. The pre-trial proceedings show the information he wants. I stated at that time——

The Court: I remember there was a certain point where you said in the absence of Mr. Bischoff you could not answer. I don't remember what it was you could not answer, but I do remember you said that.

Mr. McCaffery: Well, this suit was instituted by Mr. Bischoff, as Regional Enforcement Attorney, and myself, as District Enforcement Attorney, under the authority delegated to us for that purpose by Chester Bowles, the Administrator of the Office of Price Administration, and there has been tendered, your Honor, and marked as a pre-trial exhibit, Revised General Order No. 3, which, if it has not been introduced in evidence to this point, I would like to offer at this time.

The Court: That was your thought?

Mr. McCaffery: Yes, your Honor. And I believe that the issue [134] in that respect is exactly the same as the issue in the Patrick case, which your Honor heard this morning, and it squarely presents the problem of the authority of the delegation.

The Court: It may be admitted. Let's get it marked, Mr. Powers. Mr. Person will take care of it later.

Mr. McCaffery: Thank you.

(See Plaintiff's Pre-Trial and Trial Exhibit 5, page 68.)

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 5

REVISED GENERAL ORDER 3\*

Representation of Administrator in Court  
Proceedings  
Service of Process

General Order No. 3 is revised and amended to read as follows:

Pursuant to the authority conferred upon the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Orders 9125, 9250, 9280 and 9328, the following order is prescribed:

(a) Institution of an intervention in civil proceedings. The General Counsel or the Acting General Counsel, the Director of the Enforcement Division or the Acting Director, the Regional Attorneys or the Acting Regional Attorneys, and the Regional Enforcement Attorneys or the Acting Regional Enforcement Attorneys, are each authorized to institute and intervene in appropriate civil actions or proceedings, in the name of the Price Administrator; and any of them may authorize any other attorney employed by the Office of Price Administration to institute or intervene in appropriate civil actions or proceedings in the name of the Price Administrator. Except as herein provided, no other officer or employee of the Office of Price Administration, whether employed in the

---

\*7 FR 2238, 4852, 7910. Formerly entitled "Administrative Order 1." Revised Order issued 6-10-43, 8 FR——.

principal office in Washington, D. C., or in any regional or field office, has authority to institute or intervene in proceedings on behalf of the Price Administrator.

(b) Service of process upon the Administrator. Service of process upon the Price Administrator may be made by serving him personally, or by leaving a copy thereof at the Office of the Secretary, Office of Price Administration, Washington, D. C. In actions commenced outside the District of Columbia to obtain judicial review of rationing suspension orders issued under Procedural Regulation No. 4, service of process upon the Price Administrator may be made by personal service thereof upon the District Director or, in the latter's absence, upon the Acting District Director of the Office of Price Administration for the OPA district in which the administrative proceedings resulting in the suspension order were originally instituted. No other officer or employee of the Office of Price Administration, whether employed in the principal Office in Washington, D. C., or in any regional or field office, is authorized to accept service of process on behalf of the Price Administrator or enter his appearance in any action or proceeding, except as herein provided.

(c) Appearance for the Administrator in defensive suits. The General Counsel or the Acting General Counsel, the Director of the Enforcement Division or the Acting Director, and the Assistant General Counsel or the Acting Assistant General Counsel in charge of the Court Review, Research

and Opinion Division are each authorized to appear for and represent the Price Administrator or the Office of Price Administration in any action or proceeding instituted against the Price Administrator or the Office of Price Administration in the Emergency Court of Appeals and in proceedings for the review of determinations of the Emergency Court of Appeals in the Supreme Court; and any of them may specifically authorize any attorney employed by the Office of Price Administration to appear for and represent the Price Administrator or the Office of Price Administration in any such action or proceedings. The General Counsel or the Acting General Counsel, and the Director of the Enforcement Division or the Acting Director are each authorized to appear for and represent the Price Administrator or the Office of Price Administration in any other action or proceeding instituted against the Price Administrator or the Office of Price Administration; and any of them may specifically authorize any attorney employed by the Office of Price Administration to appear for and represent the Price Administrator or the Office of Price Administration in any other such action or proceeding.

GEORGE J. BURKE,

Acting Administrator

---

Mr. Powers: Am I correct in this? The question I asked is whether you had any express authority for this case. I understand you did not have?



Mr. McCaffery: If I understand you, by express authority, the answer is no, we did not.

The Court: The situation is, their authority is under this—identify it.

Mr. McCaffery: This Revised General Order No. 3.

The Court: That is the authority, and their sole authority, to institute this case.

Mr. McCaffery: Yes, your Honor.

Mr. Powers: The defendant rests, your Honor.

Mr. Bischoff: The plaintiff rests.

(Thereupon, at 5:45 o'clock P. M., the evidence was concluded and oral arguments were made in behalf of the respective parties.) [135]

---

[Endorsed]: No. 11016. United States Circuit Court of Appeals for the Ninth Circuit. Chester Bowles, Administrator, Office of Price Administration, Appellant, vs. East St. Johns Shingle Co., Inc., a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed March 26, 1945.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the Circuit Court of Appeals of the United  
States in and for the Ninth Circuit

No. 11016

CHESTER BOWLES, Administrator,  
Office of Price Administration,

Appellant,

v.

EAST ST. JOHNSON SHINGLE COMPANY,  
Appellee.

### STATEMENT OF POINTS

On the appeal taken in the above entitled action the appellant, Chester Bowles, Administrator of the Office of Price Administration, will urge and rely upon the following points:

1. The District Court erred in failing to award appellant judgment against the appellee for not less than \$467.83 on the first cause of action alleged in the complaint on the basis of the facts found by the Court as set forth in the Findings of Fact and Conclusions of Law on file herein.

2. The District Court erred in finding as a fact and concluding as a matter of law that the attorneys who instituted this action on behalf of appellant were without authority to do so.

3. The District Court erred in dismissing the action.

HERBERT H. BENT

Acting Regional Litigation  
Attorney

FRANZ E. WAGNER

District Enforcement Attor-  
ney

Attorneys for the Appellant.

[Endorsed]: Filed May 31, 1945. Paul P.  
O'Brien, Clerk.

---

[Title of Circuit Court of Appeals and Cause.]

#### DESIGNATION OF RECORD

Appellant herein designates the following portions of the certified transcript to be contained in the printed record on appeal herein:

1. Complaint.
2. Amended Answer.
3. Memorandum Opinion of December 15, 1944.
4. Findings of Fact and Conclusions of Law and Judgment of Dismissal.
5. Plaintiff's Pre-trial and Trial Exhibit No. 5 in evidence.
6. So much of the certified transcript of testimony as follows: Beginning with the last full paragraph on page 133 of said transcript to the end of said transcript.
7. Notice of Appeal.
8. Designation of record in District Court.



9. Statement of Points filed with this Court.

10. This Designation of Record.

**HERBERT H. BENT**

Acting Regional Litigation  
Attorney

**FRANZ E. WAGNER**

District Enforcement Attor-  
ney

Attorneys for the Appellant.

[Endorsed]: Filed May 31, 1945. Paul P.  
O'Brien, Clerk.

